

**FILED**  
 NOV 19 2010  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND, CALIFORNIA

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*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

17 BRADLEY C. SMITH, derivatively on behalf of  
 18 FRANKLIN CUSTODIAN FUNDS,

19 Plaintiff,

20 vs.

21 FRANKLIN/TEMPLETON DISTRIBUTORS,  
 22 INC., HARRIS J. ASHTON, ROBERT F.  
 23 CARLSON, SAM GINN, EDITH E. HOLIDAY,  
 24 FRANK W.T. LAHAYE, FRANK A. OLSON,  
 25 LARRY D. THOMPSON, JOHN B. WILSON,  
 26 CHARLES B. JOHNSON, AND RUPERT H.  
 27 JOHNSON,

28 Defendants,

and

FRANKLIN CUSTODIAN FUNDS,

Nominal Defendant.

Civil Action No. C 09-4775 PJH

**PLAINTIFF'S NOTICE OF APPEAL  
 AND NINTH CIRCUIT RULE 3-2  
 REPRESENTATION STATEMENT  
 (FRAP 12(b))**

Notice is hereby given that plaintiff Bradley C. Smith, derivatively on behalf of Franklin Custodian Funds, in the above-captioned action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment [Dkt. No. 55] entered in this action on October 22, 2010, and the Orders entered in this action on June 8, 2010 [Dkt. No. 44] and October 22, 2010 [Dkt. No. 54].

Dated: November 18, 2010

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NINTH CIRCUIT RULE 3-2 REPRESENTATION STATEMENT

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Defendants Franklin/Templeton Distributors, Inc., Charles B. Johnson and Rupert H. Johnson are represented in this action by the following counsel:

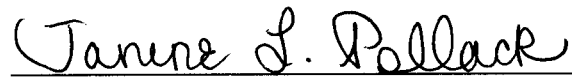
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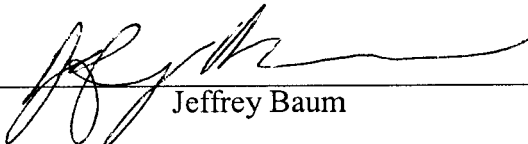
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**CERTIFICATE OF SERVICE**

I, Jeffrey Baum, hereby certify that a true copy of the above document was served upon the attorney of record for each party via e-mail on November 18, 2010.

  
Jeffrey Baum